No. 83-1142

In The
Supreme Court of the United States

OCTOBER TERM, 1983

COSMAR COMPANIA NAVIERA, S.A.
AND
THE UNITED KINGDOM MUTUAL STEAM SHIP
ASSURANCE ASSOCIATION (BERMUDA) LIMITED
Petitioners,

VERSUS

SYMEON SYMEONIDES, CURATOR OF
FRANGISKOS HAJIGEORGIOU
Respondent.

On Writ of Certiorari
To the Court of Appeal, First Circuit
State of Louisiana

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

John W. deGravelles
One Maritime Plaza
3rd Floor
Baton Rouge, LA 70802
(504) 383-8851
Counsel of Record for Respondent

Of Counsel:
DUÉ, DODSON, deGRAVELLES,
ROBINSON & CASKEY
One Maritime Plaza, 3rd Floor
Baton Rouge, LA 70802
(504) 383-8851

QUESTIONS PRESENTED FOR REVIEW

1. Is the name and residence address of the individuals who had beneficial ownership of the vessel on which plaintiff was injured relevant to the defenses of application of foreign law and *forum non conveniens*?

2. Is the name and residence address of the individual or individuals having the ultimate beneficial ownership of the vessel on which plaintiff was injured reasonably calculated to lead to the discovery of admissible evidence as to the defenses of application of foreign law and *forum non conveniens*?

3. Did the trial court abuse its discretion in striking the defenses of application of foreign law and *forum non conveniens* as a sanction against the defendants-applicants' refusal to obey its orders regarding discovery directed to those defendants?

STATEMENT OF INTERESTED PARTIES

The parties having an interest in the outcome of this case, pursuant to Rule 21.1(b) of the Rules of the Supreme Court, are listed as follows:

1. Cosmar Compania Naviera, S.A.
2. Celestial Maritime Corporation
3. The United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited
4. Micofo Anstalt Va Duz, Va Duz Lichtenstein
5. Symeon Symeonides
6. Evangelina Hajigeorgiou
7. Georgios Hajigeorgiou
8. Panayiotis Hajigeorgiou
9. Evangelos Hajigeorgiou

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Statutes and Court Rules

No. 83-1142

In The
Supreme Court of the United States

OCTOBER TERM, 1983

COSMAR COMPANIA NAVIERA, S.A.
AND
THE UNITED KINGDOM MUTUAL STEAM SHIP ASSURANCE ASSOCIATION (BERMUDA) LIMITED
Petitioners,

VERSUS

SYMEON SYMEONIDES, CURATOR OF FRANGISKOS HAJIGEORGIOU
Respondent.

On Writ of Certiorari
To the Court of Appeal, First Circuit
State of Louisiana

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent, Symeon Symeonides, Representative of the Estate of Frangiskos Hajigeorgiou, respectfully prays that the petition for writ of certiorari filed herein by petitioners, Cosmar Compania Naviera, S.A. and The United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited be denied.

OPINIONS BELOW

The Louisiana state district court rendered oral opinion and the Louisiana Court of Appeal, First Circuit, rendered written opinion. The Louisiana Supreme Court, without written reasons, denied petitioners' application for a writ of certiorari. The district court and court of appeal decisions and the denial of petitioners' writ by the Louisiana Supreme Court are set forth in the Appendix of the Petition for Writ of Certiorari. The opinion of the court of appeal is published. *Symeonides v. Cosmar Compania Naviera, S.A.*, 433 So.2d 281 (La. App. 1st Cir. 1983). The denial of petitioners' writ application to the Louisiana Supreme Court has not been published at the time of this writing.

JURISDICTION

The judgment of the Court of Appeal, First Circuit, State of Louisiana was entered on May 18, 1983 (Petition for Writ of Certiorari, Appendix C). A timely petition for rehearing was filed with the court of appeal, which was denied on June 29, 1983 (Petition for Writ of Certiorari, Appendix B). Petitioner then timely filed a Petition for Writ of Certiorari with the Louisiana Supreme Court, which was denied on October 17, 1983 (Petition for Writ of Certiorari, Apppendix A). The petition to this Court was timely filed within ninety (90) days of the denial of petitioners' application for writ of certiorari submitted to the Louisiana Supreme Court. This Court's jurisdiction is invoked by petitioners under 28 U.S.C. § 1257(3).

TEXT OF AUTHORITIES INVOLVED

The text of Title 46, United States Code, Section 688,

commonly known as the "Jones Act", Louisiana Code of Civil Procedure Article 1458 and Louisiana Code of Civil Procedure Article 1471 are reproduced at pages 2, 3 and 4 of the Petition for Writ of Certiorari.

STATEMENT OF THE CASE

A. Introduction

The central issue in this petition for certiorari is not (as petitioners suggest) the validity *vel non* of certain of its asserted defenses (application of foreign law and *forum non conveniens*) but rather whether the trial Court abused its discretion in striking these defenses as a legally permissible sanction against the petitioners' repeated and flagrant violations of the court's orders regarding discovery directed to those defenses. On this issue, the courts below properly held that a defendant (the petitioners) cannot on the one hand demand relief based on asserted defenses while on the other hand contumaciously refuse to provide information both highly relevant to these defenses and clearly discoverable thereto.

Petitioners further attempt to cloud the true issue, first by failing to fully recount the facts (and petitioners' conduct) leading up to the decision of the trial court to strike those defenses and further, by attempting to rely on the outcome of an entirely different proceeding which involved different issues, a different record (not before this Court) and differently developed facts. When the conduct of these defendants is viewed in the context of the record of *this* proceeding, the correctness of the decisions below is readily apparent and hence, the application for certiorari should be denied.

B. Facts

This is an action *ex delicto* brought under the Jones Act (46 U.S.C. § 688) and the general maritime law of the United States on behalf of the survivors of Frangiskos Hajigeorgiou, who was seriously injured on February 2, 1980 while performing seaman's work aboard the M/V ISABELLE as it lay at anchor in the Mississippi River near Darrow, Louisiana. After this accident, the seaman was taken to Our Lady of the Lake Hospital in Baton Rouge, Louisiana where he remained for 118 days and then died on May 30, 1980.

Suit was originally brought by Mr. Hajigeorgiou's court-appointed curator, Symeon Symeonides, a professor of law at Louisiana State University Law School in Baton Rouge, and then, after Hajigeorgiou's death, Professor Symeonides was substituted as personal representative of the decedent's estate and continued the suit on behalf of his survivors, the deceased's mother and three brothers.

Made defendants in this case were Cosmar Compania Naviera, S.A., a Panamanian corporation with its principal office located in Panama (R. pp. 182-183) (owner of vessel and hereafter referred to simply as "Cosmar"), Celestial Maritime Corporation, American agent and operator of the vessel, a New York corporation with its offices in New York City (Plaintiff's Exhibit 37, p. 13; R. p. 75, No. 60) (hereafter referred to simply as "Celestial"), The United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited, which was the protection and indemnity carrier (liability insurer) of Cosmar (Interrogatory #8 and response thereto, Plaintiff's Exhibit

5, R. p. 135) (hereafter referred to simply as "United Kingdom").

The M/V ISABELLE is an ore and bulk oil carrier which was purchased by Cosmar in December, 1979 or January, 1980 (R. p. 67, No. 23). Cosmar owned no other vessels (R. p. 68, No. 29). The purchase of the vessel was financed by a mortgage in favor of Morgan Guaranty Bank of New York (R. p. 156, No. 151). At the time of the accident, the vessel's home port (port of registry) was *New York* (Plaintiff's Exhibit 37, p. 2), and the operator of that vessel was the New York corporation, Celestial Maritime Corporation (Plaintiff's Exhibit 37, p. 13; R. p. 149, et seq., where Celestial agrees to manage and operate the vessel in its worldwide trade; see also, Plaintiff's Exhibit 9, March 24 Note of Evidence, where Celestial Maritime Corporation is shown as the "principal office in the United States" of Cosmar).

The vessel's first and only voyage prior to the accident sued on was totally within the United States: from Baltimore, where it had been undergoing repairs, to Darrow, Louisiana, where the accident occurred (R. p. 137, No. 42; R. p. 603, Testimony of Defendants' Witness Karaflos). Thereafter, the vessel made regular runs to and from New Orleans (R. pp. 612-613, Testimony of Defendants' Witness Karaflos), obviously deriving substantial revenue from this U.S. trade.

Trial was held on June 21 and 22, 1982, and for oral reasons given at the time of trial (R. pp. 697-710), judgment was rendered in favor of plaintiff against defendant.

In order to fully understand the decision of the trial

court in striking certain defenses raised by defendants at the trial level, a detailed recounting of the history of the discovery in question is in order:

1. On or about November 5, 1980, plaintiff filed herein certain interrogatories to defendants, said interrogatories being mailed to defendants' attorney of record and received by him on November 6, 1980, which receipt is evidenced by the return receipt from his office, a copy of which was formally made a part of the record in the first motion to compel discovery filed herein.

2. On January 1, 1981, plaintiff filed a motion for production of documents herein, and mailed a copy of same on December 31, 1981, to defendants' attorney of record.

3. On February 17, 1981, plaintiff filed a second set of interrogatories herein, which interrogatories were mailed to defendants' attorney of record and received by him on February 18, 1981, which receipt is evidenced by the return receipt from his office, a copy of which was attached to the original motion to compel discovery and made a part of the record at that time.

4. After the filing of those discovery pleadings above referenced, counsel for plaintiff requested on numerous occasions (both in writing and by telephone) that the defendants answer the interrogatories, particularly if these defendants were going to make an issue of *in personam* jurisdiction, venue, *forum non conveniens* or application of foreign law, since a large number of the interrogatories addressed this issue. (See, e.g., Plaintiff's Exhibit 10 of March 24 Note of Evidence, Letter of February 16, 1981; Plaintiff's Exhibit 11, Letter of May 4, 1981; Plaintiff's

Exhibit 12 of March 24 Note of Evidence, Letter of May 18, 1981.)

5. Without ever answering said interrogatories, defendants filed "Exceptions of Improper Venue and Lack of Jurisdiction" raising issues which were addressed by plaintiff's first set of interrogatories. (R. p. 177.)

6. Accordingly, on June 15, 1981, plaintiff filed his first motion to compel answers to interrogatories and response to discovery, which motion was filed on June 11, 1981 and was set for hearing on July 17, 1981, the same date that the defendants' exceptions of improper venue and lack of jurisdiction were set to be heard. (R. p. 213.)

7. On July 17, 1981, the trial court overruled the exceptions of improper venue and lack of jurisdiction raised by the defendants, and further granted plaintiff's motion to compel discovery, *ordering the defendants to answer interrogatories on or before September 1, 1981, some sixty (60) days from the date of hearing.* (R. p. 1, Minutes of Court for July 17, 1981.)

8. Furthermore, there had never been any answer to the original or supplemental and amending petitions filed in this case.

9. Notwithstanding the trial court's direct order to defendants in this case, defendants chose not to comply with the court's direct order so that on February 25, 1982, counsel for plaintiff moved for and obtained a preliminary default against all defendants in this case.

10. There still having been no answers to the original or supplemental and amending petitions filed herein nor answers to the interrogatories nor response to re-

quest for production of documents, on March 24, 1982, plaintiff entered a note of evidence towards the confirmation of the default judgment against said defendants. (R. p. 1; see also, R. p. 262; see also, R. p. 294.)

11. However, on this date counsel for plaintiff called counsel for defendants and told him that he had entered a note of evidence and was prepared to take a default judgment against his clients, but stated that if the defendants would answer the lawsuit and interrogatories and other discovery which had been propounded, he would not do this. This agreement was summarized by a letter dated March 23, 1982 authored by counsel for plaintiff (apparently erroneously dated March 23, as same was apparently dictated and typed on March 24, 1982), a copy of which was attached to a previous motion filed in the trial court, and can be found at R. p. 294. In this agreement, defendants agreed to answer all interrogatories and respond fully to the request for production of documents and to answer both the original and supplemental and amending petitions no later than March 31, 1982. (See also, R. p. 1.)

12. On March 31, 1982, "answers" to the interrogatories were delivered by hand to undersigned counsel. (R. p. 60.)

13. After review of said answers to interrogatories by counsel for plaintiff, it was apparent that there were many answers which were either not made, were incomplete, or were evasive.

14. On April 2, 1982, undersigned counsel telephoned counsel for defendants and specified those an-

swers to interrogatories which he believed were either absent, incomplete, or evasive, and obtained assurances that these answers would be supplemented so as to satisfy the objections made by plaintiffs. This agreement was confirmed by counsel for plaintiff's letter of April 2, 1982, a copy of which was attached to a previous motion filed in the trial court, and found at R. p. 295, and which further requested that supplementation be made within two (2) weeks of date of that letter, or by April 16, 1982.

15. Notwithstanding the promise of the defendants to supplement the interrogatories and discovery, no supplementation was made, notwithstanding the court's original order and notwithstanding the fact that there were never any objections made to the interrogatories or discovery, and notwithstanding the clear entitlement of plaintiff to this discovery. Accordingly, on April 21, 1982, plaintiff filed a motion for default judgment or alternatively to strike defenses, or alternatively for other sanctions against these defendants (R. p. 277), based on the fact that the "answers" were either nonexistent, incomplete, or evasive, and attached to that motion was a particularization of each of the answers to which plaintiff objected. (R. p. 282.)

16. This motion was set for hearing on May 7, 1982, at which time the trial court, bending over backward in an effort to resolve the dispute amicably and without the rendering of sanctions, asked counsel for both parties to meet and attempt to reach some resolution as to the "answers" provided by these defendants.

17. In the spirit of compromise, undersigned counsel met with counsel for defendants and after said meet-

ing counsel for defendants agreed and promised *in open court before the trial judge* to fully and finally answer *all* of those interrogatories which it had still not answered completely within two weeks of date of the hearing, or not later than May 21, 1982, and said agreement was entered into the minutes of the record. (R. pp. 1-2, Minutes of Court, May 7, 1982.)

18. Because of the then pending trial date of June 21, 1982, plaintiff was relying on the promise of defendants to answer fully these interrogatories since it needed these answers to interrogatories to fully prepare against the defenses urged by the defendants, most notably the defense of applicability of Greek (as opposed to general maritime and American) law.

19. Notwithstanding the promise made by counsel for defendants in open court on May 7, 1982 to fully and finally answer all those interrogatories which they still had not answered and to further fully respond to all outstanding discovery within two (2) weeks of May 7, 1982, there was *no* supplementation of these answers within the two-week period (or by May 21, 1982).

20. During the week following May 21, 1982, undersigned counsel called counsel for defendants to inquire as to why there had been no supplementation as promised, and was told that defendants had not yet made up their minds whether or not they were going to answer these interrogatories.

21. Accordingly, on May 24, 1982, plaintiff filed his third motion in this matter (R. p. 313), once again asking for a default judgment or alternatively an order striking defenses or alternatively other sanctions against these

defendants for failing to obey the court's order and promises made to the court in open court. This matter was set for hearing on May 28, 1982.

22. On May 27, 1982, one day before the proposed hearing, defendants did supplement their answers to interrogatories, but still refused to answer interrogatories 19 and 20 addressing what is probably the most basic issue on the question of application of foreign law in this matter: i.e., the true and beneficial owners of the stock in the company ultimately owning the vessel on which this accident occurred.

23. Not only did defendants refuse to answer this question, but in a letter dated May 25, 1982 (a copy of which was introduced at the hearing on May 28, 1982 as "Mover 1" and forms part of this record, but which is attached hereto for the convenience of the Court and identified as Appendix "A"), defendants indicated that the refusal to answer these interrogatories fully (in violation of the trial court's specific order) was a knowing and conscious decision and furthermore realized at the time that the decision was made that it might very well involve the loss of the defendants' right to claim the defense of application of foreign law. The pertinent portion of that letter reads as follows: "Once again my clients have delayed in answering the outstanding interrogatories because of the natural hesitation of foreigners to reveal the names and citizenships of stockholders. I am told that this information will be given to me tomorrow, if it will ever be divulged. *Of course, if the information is not given, we may have to abandon our defenses under Greek law.*" (Emphasis added.)

24. On the hearing date, the defendants admitted to the court that their answer to questions 19 and 20 did not give the name and the address of the actual persons owning the ultimate beneficial interest in the corporation as requested by these interrogatories, and were unable to give any adequate explanation of why this information was not and had not been provided notwithstanding the court's order of July 17, 1981 that this information be provided, and notwithstanding the repeated assurances and promises of these defendants to provide this information.

25. Under Article 1471 of the Louisiana Code of Civil Procedure, plaintiff asked the court to render a default judgment against this defendant as a sanction for its repeated willful and flagrant violation of the court's order. The court denied this request, but instead under the provisions of this same article struck the defenses of lack of *in personam* jurisdiction, *forum non conveniens*, and application of Greek law. (R. p. 2, Minutes of Court, May 28, 1982.) While applicants insist in footnote 2 of their petition for writ of certiorari that the trial court's demeanor throughout these proceedings indicated its intent to try the case under United States law regardless of whether the interrogatories were fully answered, this accusation is untrue and unsupported by anything in the record.

26. Application for certiorari to the Louisiana Court of Appeal, First Circuit was taken by defendants on the ruling of the trial court, but writs were denied by that court on June 16, 1982 ("Writ refused: The decision is within the discretion of the trial court." A copy of said writ denial is attached hereto as Appendix "B".)

27. Application for certiorari was made to the Su-

preme Court of Louisiana, which court denied that writ application on June 18, 1982 ("Denied on the showing made." A copy of this writ denial is attached hereto and made a part hereof as Appendix "C".)

28. Notwithstanding all of the foregoing, and notwithstanding the lapse of additional time prior to the June 21, 1982 trial date, defendants never supplemented their answers to these interrogatories, either before, during or after the trial of this case, and indeed, not even up until the present time.

In summary, these defendants consciously and continuously refused to identify the name and the address of the ultimate beneficial owner of the vessel notwithstanding three separate motions to compel, notwithstanding defendants' repeated promises in open court to provide this information, (Plaintiff's Exhibits 11, 12; Mover Exhibit 1) notwithstanding defendants' admitted understanding that the failure to provide this information would result in forfeiture of certain of its defenses (Mover Exhibit 1), notwithstanding the *direct order of the trial court* to provide these answers (R. p. 1), notwithstanding the striking of these defenses and the award of $1,000 in attorney's fees to counsel for plaintiff (R. p. 327) and notwithstanding the refusal of the Court of Appeal and the Louisiana Supreme Court to grant writ relief on this question.

ARGUMENT

A. The Information Sought by Plaintiffs and Refused by Defendants Was Both Relevant to the Defenses of Application of Foreign Law and *Forum Non Conveniens* and In Addition Discoverable Thereto

The jurisdiction of the trial court over the person of defendants and over the subject matter of the controversy is not at issue. Further, petitioners do not argue that the trial court was without the *power* to issue the sanctions against these defendants for failing to respond to discovery, nor could they validly so argue. *Insurance Corp. of Ireland, Ltd. v. Compagnie Des Bauxites de Guinee*, 456 U.S. 694, 102 S.Ct. 2099, 72 L.Ed.2d 492 (1982).

Rather, petitioners argue they were justified in violating the court's orders and accordingly the trial court abused its discretion in applying sanctions because the information sought (the identity and location of the true beneficial owners of the vessel) was not relevant to the defenses being urged (application of foreign law and *forum non conveniens*). Petitioners fail to cite a single case for this proposition and ignore the implicit holding to the contrary in cases they cite in their petition, namely, *Lauritzen v. Larsen*, 345 U.S. 571, 73 S.Ct. 921, 97 L.Ed. 1254 (1953) (where "allegiance of the defendant shipowner" is listed as a factor relevant to these issues) and *Hellenic Lines, Ltd. v. Rhoditis*, 398 U.S. 306, 90 S.Ct. 1731, 26 L.Ed.2d 252 (1970) (where the shipowner's "base of operations" is mentioned as an additional factor). Furthermore, while arguing the irrelevance of this informa-

tion in one part of their petition (Petition for Certiorari, pp. 10-14, 16), they concede elsewhere in the petition that it is at least "one factor" that a court should consider in weighing the merits of their defenses (Petition for Certiorari, pp. 17-18), and, ironically, argue that "*all* the various factors must be considered giving weight to each of them in accordance with the factual circumstances of the particular case." (Petition for Certiorari, p. 18, emphasis added.) During the eighteen months before trial that these interrogatories remained unanswered, and even after the trial court's order and their own assurances that the interrogatories would be fully answered, defendants never objected to the relevancy of these interrogatories until they sought writs on the imposition of the sanctions to the Court of Appeal and to the Louisiana Supreme Court, in clear violation of their obligation to do so under Louisiana Code of Civil Procedure Article 1458 (see Court of Appeal Opinion at p. A-14, Petition for Certiorari).

Petitioners argue, however, that the trial court could have ruled on their defenses without the specific information sought by these interrogatories, citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 102 S.Ct. 252, 70 L.Ed.2d 419 (1981) and *Volyrakis v. M/V ISABELLE*, 668 F.2d 863 (5th Cir. 1982). Pretermitting for the moment the substance of this argument, whether or not the trial court could have on the limited information made available by the defendants ruled on its defenses is beside the point, since the trial court properly refused to ever consider the merits of the defenses unless and until *all* of the relevant information on this issue was before it. Since

the information sought was clearly relevant to the defenses urged, and since the defendants continually refused to provide this information, the court properly chose to exercise its discretion in issuing the sanctions available to it.

This conclusion is all the more apparent when the Louisiana rule regarding the scope of discovery is considered. Like the federal rule, F.R.C.P. Rule 26(b), information is "discoverable" even though not admissible where what is sought " . . . appears reasonably calculated to lead to the discovery of admissible evidence." La.C.C.P. art. 1422. Had defendants timely and forthrightly answered the interrogatories in question, the answers would have had not only a direct bearing on the issues raised by the defenses at issue but also might well have led through depositions and additional discovery to the development of many additional facts bearing on these issues. The contumacious refusal of these defendants to provide this information deprived plaintiff not only of the direct information sought but the potential for the development of additional facts as well. The trial court's decision to issue sanctions rather than attempt to rule on these important defenses in the absence of relevant information obviously took into account *both* the direct relevance of the requested data on the issues raised *and* the deprivation of a source of additional information potentially relevant to the issues.

Petitioners' argument also overlooks the basic and well-established principle that neither the court nor counsel for plaintiffs is required to accept at face value the self-serving conclusions of the defendants-petitioners re-

garding the ultimate beneficial ownership of the vessel in question. *Blanco v. Carigulf Lines*, 632 F.2d 656 (5th Cir. 1980); *Davis v. Asano Bussan Co.*, 212 F.2d 558 (5th Cir. 1954).

> "This court has held that where the record left in doubt questions upon which jurisdiction could be based plaintiff was not required to depend exclusively upon defendant's affidavit for answers to that question but had the right to employ interrogatories to develop fully the necessary facts. [Citation omitted]."
>
> *Blanco v. Carigulf Lines, supra.*

The refusal of the trial court in this case to accept at face value the defendants' unsupported conclusion that all of the stockholders of Cosmar were "non-U.S. citizens" is particularly justified in this case where the record was replete with confusing, conflicting and contradictory information. For instance, while defendant claimed the M/V ISABELLE was a Greek-registered vessel with its base of operations in Greece, other documents generated during discovery showed the vessel's home port (port of registry) to be New York at the time of the accident in question (Plaintiff's Exhibit 37, p. 2), and the operator of the vessel to be the New York corporation, Celestial Maritime Corporation (Plaintiff's Exhibit 37, p. 13; R. p. 149, et seq., where Celestial agrees to manage and operate the vessel in its worldwide trade; see also, Plaintiff's Exhibit 9, March 24 Note of Evidence, where Celestial Maritime Corporation is shown as the "principal office in the United States" of Cosmar). Another example of this confusion and contradiction is reflected at R. p. 67, No. 22, where in answers to the interrogatories defen-

dant Cosmar states its principal office is in Syros, Greece, and at R. p. 182-183, where Cosmar's Secretary, Liverios Sterghiou, states under oath that Cosmar's principal offices are in Panama.

The refusal of the court to accept at face value petitioners' contentions is additionally justified in light of defendants' conduct: while their counsel continued to promise both court and opposing counsel that it would fully supply the answers to interrogatories (e.g., R. pp. 294, 295, 1-2), defendants continually refused to abide by its promises. Other than citing "the natural hesitation of foreigners to reveal the names and citizenships of stockholders," defendants never offered any justification for refusing to provide this information, even while simultaneously conceding that " . . . if the information is not given, we may have to abandon our defenses under Greek law." (Appendix "A").[1]

Returning to the substance of petitioners' argument, neither *Piper Aircraft Co. v. Reyno*, *supra*, nor *Volyrakis v. M/V ISABELLE*, *supra*, supports petitioners' contention that the trial court could have and should have ruled on the merits of their defenses in the absence of the answers to interrogatories in question. *Piper*, *supra*, involved the review of a district court's *forum non conven-*

---

[1]Typical of the type of contradictory and suspect information which confronted plaintiff and the trial court is petitioners' certification to this Honorable Court that Cosmar has ". . . no parent companies, subsidiaries or affiliates . . . " (Petition for Certiorari, p. 1, footnote), while in the same petition admitting that the stock of Cosmar was owned by a Lichtenstein entity controlled by two trustees in Switzerland (Petition for Certiorari, p. 11).

iens dismissal of a products liability action arising out of an air crash which occurred in Scotland. Since the case did not involve an allegedly foreign blue-water vessel, there was no consideration or analysis of the *Lauritzen-Rhoditis* factors relevant in the present case, namely, allegiance of the shipowner and its base of operations. More importantly, the case did not involve, as here, a defendant who contumaciously refused to respond to discovery relevant to the defenses it raised, nor did it involve the question of the appropriateness of sanctions issued in response to such refusal.

Furthermore, that portion of the *Piper* decision quoted in defendants' petition for certiorari deals not with the identification and location of the true *parties* at interest, but only with the identity and expected testimony of fact *witnesses*. Even as regards these witnesses, the Court does not suggest that *Piper* would not have had to identify such witnesses had interrogatories properly asked for the names and addresses of same, nor does it suggest that *Piper* would not have been subject to F.R.C.P. Rule 37 sanctions had it disobeyed court orders to provide that information. Rather, the Court merely declares that the mover, Piper, need not unilaterally submit affidavits identifying these *witnesses* in order to carry its burden on the *forum non conveniens* motion. Of particular interest is the Court's additional comment:

> "Of course, defendants must provide enough information to enable the District Court to balance the parties' interests."
>
> *Piper Aircraft Co. v. Reyno*, 102 S.Ct. at p. 267.

Like *Piper*, *Volyrakis v. M/V ISABELLE*, *supra*,

does not support petitioners' contention that the trial court in this case could have and should have ruled on its defenses of *forum non conveniens* and application of foreign law in the absence of its answers to interrogatories. While it is true that the court in *Volyrakis*, *supra*, ruled without the names and addresses of the stockholders in Cosmar, it did so based on the unchallenged, self-serving statement of the defendants that Cosmar is ". . . owned and managed by Greeks." *Volyrakis v. M/V ISABELLE*, *supra*, at p. 867.

Nowhere in the present record is such a statement made or supported! In *this* record, the defendant merely states that the stockholders of Cosmar Compania Naviera, S.A. are "all non-U.S. citizens." (R. p. 66.) The "non-U.S. citizen" which owns Cosmar is later revealed to be a Lichtenstein corporation controlled by two trustees in Zurich, Switzerland (R. p. 156). Nowhere are we told who owns the stock in the Lichtenstein corporation or the citizenship, domicile or residence of said owners.

Nowhere in this record is it stated that the ultimate beneficial owners of the M/V ISABELLE are Greek citizens. Nowhere in this record is it stated that the ultimate beneficial owners of the M/V ISABELLE are not U.S. citizens. The identity, citizenship, domicile, and residence of the ultimate beneficial owners of the M/V ISABELLE are not stated anywhere in the present record!

It should be remembered that the vessel owner in *Rhoditis*, *supra*, was a "non-U.S. citizen" (and in fact, was a Greek citizen), and yet, because he lived in the United

States and conducted the vessel's operations here, his company was subjected to the laws and jurisdiction of our courts.

While the court in *Volyrakis*, therefore, might well have felt justified in granting the motion of defendants therein, it did so based on "facts" not found in the present record, notwithstanding the fact that the defendants herein had ample opportunity, and in fact were ordered to provide such facts to this court. *Volyrakis v. M/V ISABELLE*, *supra*, therefore, does not support petitioners' contention that the name and address of the ultimate beneficial owner of the vessel is not relevant or that a court can and should properly rule on defenses of *forum non conveniens* and applicability of foreign law in the face of a defendant's blatant and contumacious refusal to provide this information.

B. The Case of *Volyrakis v. M/V ISABELLE* Is Not Inconsistent with the Decision of the Courts Below in the Present Case

Petitioners argue that the present case is "inconsistent" with the opinion found in *Volyrakis v. M/V ISABELLE*, *supra*, and accordingly, certiorari should be granted by this Honorable Court to reconcile the inconsistency. A comparison of the present record with the opinion in *Volyrakis*, *supra*, reveals that there exists absolutely no inconsistency whatsoever.

First, and most importantly, *Volyrakis* did not involve the issues present herein: the discoverability and relevance of the true owners of the vessel and the appropriateness of the sanctions meted out for defendants' fail-

ure to provide this information. As stated by the court of appeal:

> "As noted earlier in this opinion, Second Officer Volyrakis, who was also injured in the accident, filed suit in federal district court. Appellants place great emphasis on the fact that that case was transferred to Greece based on forum non conveniens. We do not feel that this case is dispositive of the one before the court because it is distinguishable given the sanctions imposed in this case. Perhaps if discovery had been complied with, the trial judge in this case could have reached the same result as the *Volyrakis* court. The key distinction between these two cases is that appellants lost their right to question venue, jurisdiction, and American law through their knowing and blatant disobedience of valid court orders." (Petition for Certiorari, pp. A-15 - A-16.)

Another important feature distinguishing the present case from that of *Volyrakis* is that, as defendants correctly point out, plaintiff in the *Volyrakis* case did not request information from the defendants concerning the names and addresses of the ultimate beneficial owner of the M/V ISABELLE (Petition for Certiorari, p. 5). It is precisely because no such inquiry was made that the district court accepted at face value defendants' assertion that the vessel was "owned and managed by Greeks" (*Volyrakis v. M/V ISABELLE*, *supra*, at p. 867). As argued more fully hereinabove, the present record contains no such assertion by defendants; rather, defendants herein provide no information as to the ultimate beneficial ownership in the ISABELLE, and state only that Cosmar (the record owner) is wholly owned by a Lichtenstein corpo-

ration managed by two Swiss trustees. Because plaintiff's counsel in *Volyrakis*, *supra*, failed to make the pertinent inquiries, failed to press for the full, complete and true answers to same, and failed to push past the incomplete, self-serving and conclusory allegations made by defendants in their affidavits, the court in *Volyrakis* was allowed to render its decision based solely on those affidavits. However, as mentioned above, the record in the present case is not the record in *Volyrakis* and the decision of the trial court is fully supported by the record herein.

The grounds upon which the court in *Volyrakis* distinguished the case of *Fisher v. Agios Nicolaos V*, 628 F.2d 308 (5th Cir. 1980), *certiorari denied*, 102 S.Ct. 92 (1981) further highlight the extreme differences in the record apparently before the court in *Volyrakis* and the record in the present case. The court in *Volyrakis*, *supra*, distinguished *Fisher v. Agios Nicolaos V*, *supra*, with the following language:

> "Volyrakis also relies heavily on our recent decision in *Fisher v. Agios Nicolaos V*, 628 F.2d 308 (5th Cir. 1980). In *Fisher*, the seaman was a citizen of Greece, he was hired in Greece, the vessel was registered in Greece, and it was owned by Valsley Maritime, Ltd., a Liberian corporation. The vessel was operated by a Panamanian corporation. The seaman was killed while fighting a fire on the vessel as it was docked in Beaumont, Texas. We held that, although the vessel owner made a strong case for the application of Greek law, the trial court could apply the Jones Act to the case since the vessel had a substantial base of operations in this country. We noted the following considerations: (1) the vessel at issue was the only ves-

> sel owned by defendant; (2) after its purchase, the vessel proceeded directly from Spain to the United States without a cargo; (3) the vessel's first cargo voyage under her new owner was to carry corn from Beaumont to the Soviet Union and (4) the vessel was purchased for the purpose of that trade. We distinguished *Fisher* from previous decisions because the vessel's 'entire business activity prior to the accident' was in the United States. *Id.*"
>
> *Volyrakis v. M/V ISABELLE*, *supra*, at p. 868.

Those very considerations for distinguishing the *Volyrakis* case from the *Fisher* case are, *in this record*, identical to the case in *Fisher*:

1. The vessel at issue was the only vessel owned by defendant (R. p. 137, No. 42);

2. After its purchase, the vessel proceeded directly from Baltimore to Darrow, Louisiana, without a cargo (R. p. 137, No. 42);

3. The vessel's first cargo was to carry a load from Darrow, Louisiana, to Rotterdam (R. p. 84, No. 86);

4. The vessel was purchased for the purpose of that trade (R. p. 73, Nos. 52 and 53 and conduct of vessel after accident as testified to by defendants' witness, Karaflos, R. pp. 612-613).

Finally, unlike the record relied on in *Volyrakis*, *supra*, there are documents in the present record which would tend to show that the base of operations of this vessel was in the United States, and specifically New York. At the time of the accident, the vessel's home port (port of registry) was New York (Plaintiff's Exhibit 37, p. 2), and the operator of that vessel was the New York cor-

poration Celestial Maritime Corporation (Plaintiff's Exhibit 37, p. 13; R. p. 149, et seq., where Celestial agrees to manage and operate the vessel in its *worldwide* trade; see also, Plaintiff's Exhibit 9, March 24 Note of Evidence, where Celestial Maritime Corporation is shown as the "principal office in the United States" of Cosmar).

In sum, petitioners' attempted reliance upon the *Volyrakis* decision is both misleading and misplaced. The issues in the two cases are different, as are the respective records. The actions of the courts below, when reviewed in the context of this record, demonstrate conclusively that the decisions are correct. Accordingly, certiorari should be denied.

C. Trial Court's Sanctions Are Proper

The basic issue here is whether or not a defendant can affirmatively seek the relief of a court by urging certain defenses while at the same time contumaciously refusing to provide information to the court and opposing counsel which is relevant to a full and fair consideration of these defenses. More specifically, may a court strike those defenses when the defendant has willfully and flagrantly refused to obey the court's orders regarding discovery directed to those defenses? As the Louisiana court of appeal correctly stated, the answer to these inquiries is found in *Insurance Corp. of Ireland, Ltd. v. Compagnie Des Bauxites de Guinee, supra.* In *Insurance Corp. of Ireland, supra,* this Honorable Court considered the question of a district court's power to apply sanctions under Rule 37 of the Federal Rules of Civil Procedure in response to a defendant's refusal to respond to discovery

regarding the defendant's defenses of lack of *in personam* jurisdiction. The Court found that the district court had such power.

The Court further considered the appropriateness of the sanction chosen by the district court and the standard for measuring same. In the present case, the district court applied the sanction of striking defenses under La.C.C.P. art. 1471 which was patterned after and tracks the language of F.R.C.P. Rule 37(b)(2).

In measuring the conduct of the court, this Honorable Court should remember that a trial court is granted wide discretion in issuing sanctions, and such discretion should not be disturbed on appeal. *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 96 S.Ct. 2778, 49 L.Ed.2d 747 (1976). In addition, it must be remembered that the purpose of such a sanction is not merely for purposes of the case in which the sanction is imposed, but in addition, is utilized as a deterrent to discourage future conduct of a similar nature by others similarly situated. *National Hockey League v. Metropolitan Hockey Club, Inc., supra.*

When the conduct of the defendants in this case (as outlined hereinabove) is measured by the standards enunciated in *Insurance Corp. of Ireland, supra*, there is no doubt that the decision of the district court as analyzed and approved by the Louisiana court of appeal was eminently just and proper. Plaintiff-respondent respectfully directs the Court's attention to that portion of the court of appeal opinion (Petition for Certiorari, pp. A-12-A-16). See also, *Lekkas v. Liberian M/V CALEDONIA*,

Nueva Valencia Compania Naviera, S.A., 443 F.2d 10 (4th Cir. 1971).

D. The Trial Court Properly Refused to Consider Forum Selection Clause of Employment Contract

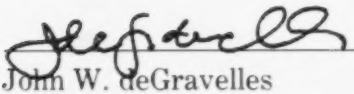
The trial court (and the court of appeal) refused to consider the forum selection clause of the Greek contract, since this formed part of the defenses struck by the trial court as a result of the defendants' contumacious refusal to respond to discovery, all as discussed in more detail hereinabove. It is ironic that petitioner would take issue with the court's failure to consider this one factor in its defenses while refusing to give to the court below information regarding a far more important factor.

In any event, little weight is given to these contractual provisions. An excellent example is *Hellenic Lines, Ltd. v. Rhoditis, supra*, where an identical provision relied on by defendants was involved. In that case, this Honorable Court gave little, if any, weight to this provision. Another example is *Fisher v. Agios Nicolaos V, supra*, where an identical provision was likewise given little weight. The Supreme Court cases cited by petitioners do not involve Jones Act or maritime personal injury cases.

CONCLUSION

Plaintiff-respondent requested by interrogatory information relevant to defenses raised by petitioners herein. Petitioners, without explanation and in violation of court order, refused to provide this information. The court, after considering the blatant and continuous misconduct of the defendants-petitioners in refusing this information, rendered an appropriate sanction. The action of the trial court was proper and correct under the circumstances, and accordingly, the petition for certiorari should be denied.

Respectfully submitted,



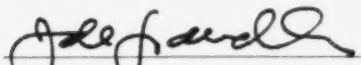
John W. deGravelles
One Maritime Plaza, 3rd Floor
Baton Rouge, LA 70802
(504) 383-8851

Of Counsel:

DUÉ, DODSON, deGRAVELLES,
ROBINSON & CASKEY
One Maritime Plaza, 3rd Floor
Baton Rouge, LA 70802
(504) 383-8851

CERTIFICATE OF SERVICE

I hereby certify that pursuant to United States Supreme Court Rule 28.3, all counsel of record herein have been served with three (3) copies each of this Opposition to the Petition for Certiorari by depositing the same in the United States mail, first class postage prepaid, properly addressed to counsel, at their office address.



John W. deGravelles

APPENDIX A

LAW OFFICES
CHAFFE, McCALL, PHILLIPS, TOLER & SARPY
1500 FIRST NATIONAL BANK OF COMMERCE BUILDING
NEW ORLEANS 70112
(504) 568-1320
CABLE "DENEGRE"
TELEX 58 335
(ITT) 460122 CMPTS UI
TELECOPIER EXT. 211

May 25, 1982

FILE NO. 52394/HGG

John W. deGravelles, Esquire
Due, Dodson, deGravelles, Robinson & Caskey
442 Europe Street
Baton Rouge, Louisiana 70802

Re: M/V ISABELLE

Dear John:

Once again my clients have delayed in answering the outstanding interrogatories because of the natural hesitation of foreigners to reveal the names and citizenships of stockholders. I am told that this information will be given to me tomorrow, if it will ever be divulged. Of course, if the information is not given, we may have to abandon our defenses under Greek law.

I have retained Professor Kenneth Boudreau to estimate the economic losses resulting from the death of Hajigeorgiou. I do not have a copy of your economist's report; it was not attached to your letter to me. Please forward this.

Very truly yours,

CHAFFE, McCALL, PHILLIPS,
TOLER & SARPY

/s/ Harvey G. Gleason

HGG/jac

APPENDIX B

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

SYMEON SYMEONIDES, CURATOR OF
FRANGISKOS HAJIGEORGIOU

VERSUS

COSMAR COMPANIA NAVIERA, S.A.,
CELESTIAL MARITIME CORPORATION AND
THE UNITED KINGDOM MUTUAL STEAM SHIP
ASSURANCE ASSOCIATION (BERMUDA) LIMITED

NUMBER 82 CW 0441

JUNE 16, 1982

In re: Cosmar Compania Naviera, S.A., Celestial Maritime Corporation and the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited applying for writs of certiorari, review, mandamus, and/or prohibition to review a judgment of and stay proceedings in 19th Judicial District Court, Parish of East Baton Rouge, No. 235,894.

June 16, 1982

WRIT REFUSED: The decision is within the discretion of the trial court.

FHS

FSE

Court of Appeal, First Circuit

June 16, 1982

/s/ Stanley P. Lemoine

Deputy Clerk of Court
For the Court

APPENDIX C

The Supreme Court of the State of Louisiana

SEYMEON SYMEONIDES, CURATOR OF
FRANGISKOS HAJIGEORGIOU

VS

No. 82-C-1522

COSMAR COMPANIA NAVIERA, S.A.,
CELESTIAL MARITIME CORPORATION AND
THE UNITED KINGDOM MUTUAL STEAM
SHIP ASSURANCE ASSOCIATION
(BERMUDA) LIMITED

In Re: Cosmar Compania Naviera, S.A., Celestial Maritime Corporation and the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited, applying for Supervisory Writs and Stay Order, E. Baton Rouge Parish, No. 235,894.

June 18, 1982

Denied on the showing made.

JLD

PFC

WFM

JLD

JCW

Supreme Court of Louisiana

June 18, 1982

/s/ Frans J. Labranche, Jr.

Clerk of Court
For the Court

(THIS PAGE INTENTIONALLY LEFT BLANK)